84-752

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

IN RE: Laronce Beard, *Petitioner*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

LARONCE BEARD
Pro Se
1862 Central Avenue
Augusta, Georgia 30904

November 15, 1984

42 pp

QUESTIONS PRESENTED

I. Whether the District Court must apply state Procedural Rules and Regulations for the government of the bar in proceedings before District Court.

II. Whether Article II Section 1 of the U.S. Constitution authorizes lower federal courts to make rules for the government of the bar in the absence of Congressional legislation.

III. Whether the charges against an attorney in a disciplinary proceeding have to be proven beyond a reasonable doubt.

IV. Whether disciplinary proceedings based upon extreme language violate the petitioner's right to freedom of speech as guaranteed by the First Amendment to the United States Constitution.

V. Whether disciplinary proceedings held by a United States District Court must be held in a manner that guarantees the respondent due process of law as guaranteed by the Fifth Amendment to the United States Constitution.

LIST OF PARTIES

The United States Department of Justice is a party to this action and its name does not apepar in the caption of the case.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

IN RE: Laronce Beard, *Petitioner*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Laronce Beard, *pro se,* petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINION BELOW

The opinion of the Court of Appeals below is unreported (App. A, *infra,* pp. A to A). The opinion of the District Court is unreported below (Appendix C, *infra,* pp. 7-7) was not reported.

JURISDICTION

The judgment of the Court below (Appendix A, *infra,* p. 2) was entered on August 23, 1984. Rehearing was

sought and denied on September 19, 1984. Appendix B, *infra,* p. 6). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

THE CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitution and statutory provisions involved have been set out in Appendix E-H.

STATEMENT OF THE CASE

On October 5, 1983 the respondent was indefinitely suspended from the United States District Court for the Southern District of Georgia after a hearing on a Motion for Summary Judgment in a case styled *Beard* v. *Annis* (R. 1). On October 31, 1983 formal charges were filed and served upon the respondent directing him to show cause on November 17, 1983 why he should not be disbarred (R. 1-3). On November 16 and 17, 1983, the district judge issued two orders making findings of fact and continuing the instant proceedings (R. 6,7). On January 19, 1984 the district judge entered an order denying the respondent Motion to Dismiss; motion to inspect files; denying the government's Motion to Quash, denying the respondent's motion for a more definite statement, denying respondent's request to produce and denying the respondent's motion to perpetuate testimony (R. 27). The Court added new charges against the respondent in the order dated January 19, 1984 and set a hearing for January 20 1984. The district court suspended the respondent for one year after a hearing on January 20, 1984 (R. 35) (Appendix C). From this order the respondent appealed (R. 38) to the Eleventh Circuit Court of Appeals. On August 23, 1984 the Eleventh Circuit entered an order affirming the order

of the district court (Appendix A). On September 18, 1984 the Eleventh Circuit denied petitioner's petition for rehearing (Appendix B). The jurisdiction of the Court of first instance was based upon Local Rules for the United States District Court for the Southern District of Georgia Rule 19.5 (Appendix I) and upon Article III Section I of the United States Constitution (Appendix J).

REASONS FOR GRANTING THE PETITION

I. This case presents important questions concerning the nature and scope of disciplinary proceeding of attorneys before the United States District Court for the Southern District of Georgia.

There is a split of authority among the Circuit Courts of Appeal as to the applicable standard of review in federal disciplinary proceedings. The Court of Appeals for the Eleventh Circuit in the opinion below applied the any evidence rule and clearly erroneous standard (Appendix A) (p. 2 (AR)). Some courts have applied an "abuse of discretion standard in the review of disciplinary actions. *See Hull* v. *Celanese Corp.*, 513 F.2d 568, 571 (2nd Cir. 1975). Other courts have applied a clear and convincing standard in order to sustain charges of misconduct. *See* In Re: *Ryder*, 263 F. Supp. 360, *affirmed* 381 F.2d 713 (4th Cir., 1967); *see also In Re: Fisher,* 179 F.2d 361 (7th Cir., 1950).

The analogous procedure under Georgia state law is Rule 4-221(e) of the Rules and Regulations for Organization and Government of State Bar of Georgia, which provides:

> "In all proceedings under this chapter, including jury trials, the burden of proof shall be on the state Bar of Georgia, in all proceedings under

> this chapter occurring after preliminary investigations as described in Rule 4-204 the procedures and rules of evidence applicable in civil cases shall apply except that the Quantum of proof required of the state bar shall be beyond a reasonable doubt. *See In the Matter of Brooks,* 249 Ga. 556, 292 S.E. 2d 686 (1982)."

Rule 302 of the Federal Rules of Evidence provides:

> In and actions and proceedings the effect of a presumption respecting a fact which is an element of a claim or defense as to which state law supplies the rule of decision is determined in accordance with state law.

In disciplinary proceeedings the analogous procedure would be Rule 4-221(e) of the Rules and Regulations for Organization and Government of the State Bar of Georgia. In order to avoid inconsistent adjudication of charges of misconduct by state and federal courts, the federal court in the absence of adequate procedures of its own should apply the state disciplinary rules and procedures. The petitioner is entitled to have the government prove its case beyond a reasonable doubt and on review to have the reviewing court to determine if that standard was met.

II. The issues raised in this case have not been decided by this Court nor has this court spoken plainly on the issues.

CONCLUSION

The Court of Appeals for the Second Circuit voted in *Koden* v. *U.S. Department of Justice,* 564 F.2d 228 (7th Cir. 1977) that any court or administrative agency which has the power to admit an attorney to practice has the authority to disbar or discipline attorneys for unprofes-

sional conduct even if Congress has not expressly provided for disciplinary proceedings in the lower federal courts. The procedural and substantive standards to be applied to federal disciplinary proceedings, should be uniform, should comport with due process of law and should otherwise insure that sanctions are imposed in proceeding that assure fundamental fairness as guaranteed by the Fifth and Sixth Amendments to the United States Constitution. The process and manner by which sanctions are imposed upon members of the bar is a matter of substantial public importance and concern. For these reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

LARONCE BEARD
Pro Se

November 15, 1984

APPENDIX A

AMENDMENT I

Freedom of Religion, of Speech, and of the Press

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and petition the Government for a redress of grievances.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 84-8194
NON-ARGUMENT CALENDAR

IN RE:

LARONCE BEARD,

Petitioner.

Appeal from the United States District Court for the Southern District of Georgia

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(August 23, 1984)

Before RONEY, FAY and JOHNSON, Circuit Judges.
PER CURIAM:

This is an appeal from an order of the United States District Court for the Southern District of Georgia sus-

pending Attorney Laronce Beard from practice before the federal courts of the Southern District of Georgia for a period of one year. The issuance of this order followed a hearing on the United States Attorney's motion for Rule Nisi, which alleged that Mr. Beard had "brought several actions in the Court in which he has made certain allegations and statements for which no reasonable basis existed either in fact or law and which are devoid of good grounds to support them." After a hearing in which testimony was taken from several witnesses who had been involved in the cases in question, and after consideration of the documentary evidence offered by both parties, Judge Edenfield held that the allegations and statements made by Mr. Beard "were *not* in any fashion related to the issues pending in the particular case"; demonstrated a "callous disregard for the truth, the rights of the parties and the rights of others"; and violated Rule 11 of the Federal Rules of Civil Procedure and several Local Rules of Professional Conduct. He ordered Mr. Beard suspended from federal practice for one year, with leave to apply for reinstatement at the end of that time.

Mr. Beard argues on appeal that "there has been no abuse of the judicial process sufficient to warrant the imposition of sanctions against this attorney." In reviewing this claim, substantial deference must be accorded to the findings and conclusions of the district court, which is responsible for supervising the conduct of the members of the bar practicing before it. We apply the "clearly erroneous" standard to findings of fact, while carefully examining the district court's interpretation and application of relevant ethical standards. *Norton v. Tallahassee Memorial Hospital,* 689 F.2d 938, 941 (11th Cir. 1982), *reh'g denied,* 700 F.2d 617 (11th Cir. 1983); *Cossette v. Country Style Donuts,* 647 F.2d 526, 530 (5th Cir. 1981).

Under this standard,[1] we find that there was no error in the imposition of a suspension order for violation of the Local Rules of Professional Conduct.[2]

Judge Edenfield charged Mr. Beard with the violation of several Model Rules of Professional Conduct which have been adopted by that court as Local Rules.[3] The extreme character of the language used ("the master list from which potential jurors are drawn for jury service in the U.S. District Court is composed of approximately 9,000 individuals who are part of a system of organized crime"; there is "a subculture or invisible government which controls or attempts to control Richmond County") supports Judge Edenfield's conclusion that these statements cannot be supported by the facts and that they are irrelevant to

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[1]Some courts have suggested that an "abuse of discretion" standard may be appropriate in the review of disciplinary actions. *See* Hull v. Celanese Corp., 513 F.2d 568, 571 (2d Cir. 1975) (applying "abuse of discretion" standard); *Norton, supra* at 619 (suggesting that "abuse of discretion" standard may be applicable in some actions distinguishable from instant case). Application of this standard of review in the instant case would make no difference, as it would also support the findings and conclusions of the district court.

[2]Because the district court's order must be affirmed on this ground, there is no need to reach the question of whether a violation of Fed. R. Civ. P. 11, generally punishable only by the imposition of attorney's fees, may be enforced by the imposition of a suspension order.

[3]These Rules correspond to the following Model Rules of Professional Conduct: Rule 3.3(a)(1) ("[a] lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal"); Rule 4.4 (respect for the rights of Third Persons); Rule 8.2(a) ("[a] lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge"); Rule 8.4(c) (it is professional misconduct for a lawyer to: (c) engage in conduct that involves fraud, dishonesty, deceit or *misrepresentation*) (emphasis supplied); Rule 8.4(d) (it is professional misconduct for a lawyer to: (d) engage in conduct that is prejudicial to the administration of justice).

the issues in the cases in which they are raised. This conclusion is also reinforced by the testimony of several witnesses who had been involved as opposing counsel in the actions in question.[4] These attorneys expended substantial time and effort attempting to discover the foundation that existed for Mr. Beard's allegations, and were unsuccessful both in finding such support and in persuading Mr. Beard that the statements in question were irrelevant and without foundation. On the basis of this evidence, we cannot say that Judge Edenfield erred in holding that the allegations in question displayed a total disregard for truth, the rights of the parties and the rights of others. The imposition of a one year suspension is, moreover, well within the discretion which is conferred on the district bench to regulate the conduct of and take measures against unethical practices by the lawyers who practice before it. *Woods v. Covington Cty. Bank,* 537 F.2d 804, 810 (5th Cir. 1976); *Hull v. Celanese Corp.,* 513 F.2d 568, 571 (2d Cir. 1975).

AFFIRMED

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[4]The cases discussed in this action were Brodie v. Alexander (CV181-09), Purzycki v. Citizens and Southern National Bank and Augusta AMC Jeep, Inc. (CV181-207), and Beard v. Annis (CV181-110).

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 84-8194

IN RE:

LARONCE BEARD,

Petitioner.

Appeal from the United States District Court for
the Southern District of Georgia

(September 19, 1984)

Before RONEY, FAY and JOHNSON, Circuit Judges.
PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above en ..ed and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT

/s/ Frank Johnson
United States Circuit Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

IN RE:	)	
	)	MISC. NO. 183-41
LARONCE BEARD	)	

ORDER

On January 20, 1984, this Court held a close evidentiary hearing in the above case. Respondent Laronce Beard was required to show cause before the Court why his conduct, as described in the government's motion for Rule Nisi, should not result in disbarment or suspension from practice in this Court or other disciplianry action because such conduct was violative of the standards of practice required of members of the Court's bar under its Local Rules.

This was a plenary hearing in which the Court heard testimony from several witnesses[1] and received into evidence certain documentary evidence relating to the issues pending before Court in this case.[2] Following the hearing, Mr.

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[1] Attorneys Melissa S. Mundell, Herbert E. Kernaghan, Jr. and Leonard O. Fletcher, Jr. testified in the government's case. In presenting his case, Mr. Beard called several of his former clients, Mr. Robinson, Mr. Street, and Mrs. Hogan. Mr. Beard also testified at the hearing.

[2] A copy of the transcript of a portion of the hearing held on October 5, 1983, and a copy of those documents appended to the government's motion for Rule Nisi were admitted. Additionally, a copy of the interrogatories filed in *Beard v. Annis,* (CV182-110), and a copy of the final orders and judgments entered in three separate cases were received in evidence. Mr. Beard offered in evidence various documents including a motion filed in an unrelated criminal case, newspaper articles and affidavits. His attorney workpapers were also submitted to the Court for an *in camera* inspection.

Beard submitted to the Court a narrative summary of his trial exhibits and he filed a post-trial memorandum with the Court. The government has obtained a copy of certain hospital records pertaining to Mr. Beard and these records have been filed with the Court under seal. A review of these records show that they will not be of any help or guidance to the Court in its assessment of Mr. Beard's conduct.

The attorneys who were involved in the three cases filed by Mr. Beard, and which form the basis of the government's motion for Rule Nisi, testified at the hearing. Assistant United States Attorney Melissa S. Mundell represented the government in *Brodie v. Alexander,* (CV181-09); Mr. Herbert E. Kernaghan, Jr. represented one of the defendants in *Purzycki v. Citizens and Southern National Bank and Augusta AMC Jeep, Inc.,* (CV181-207), and Mr. Leonard O. Fletcher, Jr. represented the defendant in *Beard v. Annis,* (CV181-110). In each action, a limited issue was involved.*Brodie v. Alexander* involved a claim under the Privacy Act, *Purzycki* involved a claim brought under the Truth in Lending Act, and *Beard v. Annis* involved a Title 7 discrimination claim. Each of the attorneys testified extensively on their handling of the particular case in which they were involved.

In *Brodie v. Alexander,* government counsel testified that she tried to convince Mr. Beard that certain matters he filed in that case had no relevance to the pending issues. Mr. Beard obviously did not listen to her since he continued to file documents and papers that contained totally irrelevant and immaterial matters. The brief which he filed in that case, and which is the subject of the government's motion for Rule Nisi, contains matters which are troubling to the Court. He has made certain serious accusations and

charges against an unnamed Superior Court Judge. Mr. Beard states in part that, "[a] Judge of Superior Court has awarded attorneys' fees in a manner which has rewarded attorneys involved in distribution and sales of controlled substances." He makes further allegations about a drug distribution network in Richmond County. These kinds of allegations, unsubstantiated and unproven as they are, demonstrate a total disregard for the truth, the rights of the parties and the rights of others. It is without question that such allegations are immaterial and irrelevant to the issues pending in *Brodie v. Alexander.*

In Purzycki, Mr. Beard made allegations about the jury system and the jury selection process in federal district court. *Purzycki* did not involve any jury issues. Moreover, his statement that "[t]he master list from which potential jurors are drawn for jury service in the U.S. District Court is composed of approximately 9,000 individuals who are part of a system of organized crime," is so outrageous that it defies proof. His statement that "[t]hese individuals will, and have in the past voted as jurors in any manner in which they are ordered by elements of organized crime and therefore create a situation in which all federal litigants who request jury trials are denied fundamental fairness" defies comprehensiion, imagination or proof. These allegations show a complete and utter disregard for the truth and the rights of others.

Also in *Purzycki,* Mr. Beard submitted an affidavit from one of his clients, Mr. Joseph Robinson. Although this affidavit was later withdrawn by Mr. Beard, it contains matters which are totally irrelevant and immaterial to the issues in the case. Furthermore, the accusatory statements in the affidavit were of a slanderous nature about a then deceased judge. The allegations were never proven nor substantiated. According to Mr. Kernaghan, the matters raised in the affidavit were untrue.

In *Beard v. Annis,*[3] Mr. Beard made certain allegations and statements in the complaint (*e.g.*, paragraphs 8, 9) for which no evidence or proof was ever shown. He prepared certain answers to interrogatories which, although not filed in the case, were transmitted to opposing counsel. Mr. Fletcher testified that he relied upon those answers in undertaking and formulating his discovery in the case. That attorney spent much needless time, effort and preparation in order to determine whether or not plaintiff's contentions had any foundation. In the end, it was determined that much of the information supplied in the interrogatory answers was meaningless, unsupported and totally irrelevant and immaterial to the issues pending in the case.[4] Moreover, Mr. Fletcher testified that the charges of corruption, organized crime and encouragement of homosexuality raised by Mr. Beard in the case caused great mental anguish, concern and worry to those individuals about whom the charges were made. These charges and allegations were never substantiated nor proven at any stage of the proceedings. It was also clearly established that one statement in the answers to interrogatories was completely untrue. The allegations that Mr. McKinley was forced to retire because of race were simply not true (Tr. 4).[5] Mr. Fletcher testified that Mr. McKinley was the first black to hold the particular position in question and that he retired with distinction at Augusta Tech. The Court also recalls

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[3]Judge Bowen earlier ruled that this suit was groundless, baseless and frivolous when it was brought (Gov't. Exh. No. 1, Tr. at 5). A written order was subsequently entered (Gov't. Exh. No. 8).

[4]The Court takes particular cognizance of the answers given in response to interrogatory numbers 10 and 13. The answers to interrogatory number 10 are set forth in the body of the government's motion for Rule Nisi and thus will not be repeated.

[5]Transcript of October 5, 1983 hearing.

testimony by Mr. Fletcher of another incident which involved the taking of a deposition of an inmate at the Richmond County Jail. This depositon proved to have absolutely no connection or bearing whatsoever with regard to the issues pending in *Beard v. Annis.*

Having recited some of the evidentiary matters adduced at the hearing and the Court's view of that evidence, the Court states hereinafter its findings and conclusions:

1. Laronce Beard is a licensed practicing attorney who has been admitted to the bar of this Court. He attended public schools in Richmond County and later graduated with honors from Mercer University. Thereafter, he attended Harvard Law School where he graduated and obtained his law degree.

2. Since graduation from Harvard Law School, Mr. Beard has practiced in Albany and Augusta, Georgia. At the present time he is a sole practitioner in Augusta.

3. Mr. Beard was plaintiff's counsel in each of the three cases enumerated in the government's motion for Rule Nisi. He prepared each of the pleadings, papers and documents appended to the government's motion. The same have been admitted into evidence in this proceeding.

4. It was firmly established by the government's witness testimony that the statements and allegations made by Mr. Beard in each of the three cases, as set forth by the motion for Rule Nisi, were *not* in any fashion related to the issues pending in the particular case nor did they address the merits of the case. The testimony by each attorney also etablished that no evidence was adduced to prove or substantiate the subject statements and allegations during the discovery or the pretrial stages of each case.

The testimony of Mr. Beard's witnesses did not shed any light on the issues presently before the Court in this proceeding. Although Mr. Beard testified at length regarding

his investigations and the information available to him prior to the filing of the pleadings, papers and documents in issue, such testimony neither persuaded nor convinced the Court that his actions were justified, warranted or proper under the circumstances. After reviewing the pleadings, documents and papers containing the statements and allegations in question, considering the documentary evidence and the testimony of all of the witnesses, the Court finds that the allegations and statements in issue were made by Mr. Beard with a callous disregard for the truth, the rights of the parties and the rights of others. Moreover, they were made in an improper and unprofessional manner, without any reasonable basis either in fact or law and no good grounds were shown to support them.

5. Mr. Beard's conduct has adversely affected the integrity and competence of the legal profession and it has adversely impacted upon the legal system as a whole.

6. Mr. Beard's conduct violates Rule 11 of the Federal Rules of Civil Procedure to the extent that I have found that the allegations and statements in issue were made without a reasonable basis either in fact or law and no good grounds were shown to support them.

7. Mr. Beard's conduct violates certain rules of the Model Rules of Professional Conduct as adopted by the American Bar Association. Specifically, I find that his conduct violates ABA Model Code Rule 3.3(a)(1)[6] ("(a) A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal [.]"); Rule 4.4[7] (Respect for Rights of Third Persons); Rule 8.2(a)[8] (A lawyer shall

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[6]See Disciplinary Rule (DR) 7-102(A)(5) of the ABA Model Code of Professional Responsibility (adopted 1969, as amended).

[7]See DR 7-102(a)(1) of the ABA Model Code of Professional Responsibility (adopted 1969, as amended).

[8]See DR 8-102(B) of the ABA Model Code of Professional Responsibility (adopted 1969, as amended).

not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge. . .); Rule 8.4(c)[9] (It is professional misconduct for a lawyer to: (c) engage in conduct that involves dishonesty, fraud, deceit or *misrepresentation)*(emphasis supplied) and Rule 8.4(d)[10] (It is professional misconduct for a lawyer to: (d) engage in conduct that is prejudicial to the administration of justice).

8. Rule 5(d), Section IV, of this Court's Local Rules provides:

> The standards of professional conduct of the members of the bar of this court shall include the current Canons of professional ethics of the American Bar Association. A violation of any of these Canons in connection with any matter pending before this court may constitute a contempt of this court potentially subjecting such attorney to appropriate disciplinary action.

9. This Court bears the responsibility for the supervision of members of its bar. *E.F. Hutton & Company v. Brown,* 305 F. Supp. 371, 378 (S.D. Tex. 1969); *Hull v. Celanese Corp.,* 513 F.2d 568, 571 (2nd Cir. 1975).

10. The Court has the inherent authority to regulate the conduct of the members of the bar who have occasion to practice before it. *Harcey v. Brown,* 512 F. Supp. 788, 790 (N.D. Ill. 1981).

11. The inherent power of a court to manage its affairs necessarily includes the authority to impose reasonable and appropriate sanctions upon errant lawyers practicing

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[9]See DR 1-102(A)(4) of the ABA Model Code of Professional Responsibility (adopted 1969, as amended).

[10]See DR 1-102(A)(5) of the ABA Model Code of Professional Responsibility (adopted 1969, as amended).

before it. *Loctite Corp. v. Fel-Pro Inc.*, 94 F.R.D. 1, 11-12 (N.D. Ill. 1980).

12. Based upon the foregoing, this Court finds and concludes that Mr. Laronce Beard should be suspended from practice before the federal courts in this District for a period of time. On October 5, 1983, he was suspended from practice in both this court and the bankruptcy court. His suspension from practice in the bankruptcy court was modified in an order entered on November 16, 1983, so as to allow him to conclude some pending matters which required action largely of a ministerial or procedural nature.

13. This Court concludes that Mr. Laronce Beard should be suspended from practice before this Court from February 16, 1984 to February 16, 1985. This suspension shall also apply to his practice before the United States Magistrate and the bankruptcy court, with the exception that he may continue to perform those functions as permitted by this Court in its order of November 16, 1983. However, neither in federal district court nor in bankruptcy court shall the clerk accept any new filings from Mr. Beard during the period of his suspension from practice. If he is involved in any presently pending district court cases, he may associate counsel in order to allow those cases to proceed to an orderly conclusion should the same become necessary. At the end of the suspension, Mr. Beard may apply for reinstatement to this Court.

14. The foregoing findings and conclusions constitute the decision of this Court. The Clerk is directed to send a copy of this Order to the State Bar of Georgia, Disciplinary Section.

SO ORDERED, this 16th day of February, 1984.

/s/ B. Avant Edenfield
JUDGE, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

IN RE:	)	
	)	MISC. NO. 183-41
LARONCE BEARD	)	

ORDER

I. Background

On October 31, 1983, the United States Attorney filed a Motion for Rule Nisi in this Court pursuant to Local Rule Section IV, Rules 5 and 10, to show cause why Mr. Beard should not be disbarred from practice before this Court, or otherwise disciplined. The motion generally refers to pleadings contained in several lawsuits filed and signed by Beard in the recent past. The government contends that Mr. Beard has made various statements in those pleadings which warant disciplinary action as provided by Local Rule V, Section 5.

Judge Bowen issued an Order to show cause directing Beard to appear before him on Novewmber 17, 1983.

Beard's counsel filed a motion for continuance, to which the U.S.A. did not oppose. Beard co-signed the motion, then filed a motion to strike his signature from it. His attorney promptly moved to withdraw from the case and Judge Bowen granted same. Beard then moved to disqualify Judge Bowen from this case. The hearing has been continued as a result of Judge Bowen's Order of December 29, 1983, granting Beard's motion.

The case was transferred to me on January 4, 1984. The record contains several motions which the Court will now address.

II. Conclusion

A. Motion to Dismiss Proceeding

The Court having read and considered the motions of Laronce Beard and the response of the United States, DENIES Mr. Beard's Motion to Dismiss Proceedings or in the Alternative to Compel an In-camera Inspection of Files. *See* Local Rule Section IV, Rule 5(a) (disciplinary power of this Court), (d) (adopting the ABA canons of professional ethics), (e) (notice requirements); Rule 10 (prosecution of this action by United States Attorney); ABA Model Code Rule 3.3(a)(1) ("(a) A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal[.]"); Rule 4.4 (Respect for Rights of Third Persons); Rule 8.4(c) (engage in conduct involving dishonesty, fraud, deceit or misrepresentation), 8.4 (d) (engage in conduct that is prejudicial to the administration of justice); F.R.C.P. Rule 11 (Signing of Pleadings, Motions, and Other Papers; Sanctions).

B. Motion to Quash Subpoena

On December 27, 1983, the United Stats moved to quash Mr. Beard's subpoena, as directed to Assistant United States Attorney, J. Michael Faulkner, requiring him to appear and provide testimony in this case. One of the bases for this motion involved Mr. Beard's failure to comply with the provisions of 28 C.F.R. Section 16.23(c) (1983). Subsequent to this motion, Beard filed an affidavit in an effort to comply with the requirements of that section. Mr. Beard requests Mr. Faulkner's testimony regarding a conversation he claims occurred between them during a recent court proceeding. Beard also seeks a motion Faulkner supposedly filed in a certain criminal case.

The government has renewed its motion to quash, maintaining that Beard has again failed to comply with the requirements of the Section 16.23(c). This particular code

section refers to Department of Justice policies concerning the disclosure of information by department employees "[i]n all federal and state proceedings in which the United States is a party[.]" 28 C.F.R. Section 16.21(a)(1). Section 16.23(c) states:

> If oral testimony [of an employee of the Department of Justice] is sought by a demand in a case or matter in which the United States is a party, an afidavit, or, if that is not feasible, a statement by the party seeking the testimony or by the party's attorney setting forth a summary of the testimony sought must be furnished to the Department attorney handling the matter.

The Court is unable to discern from the government's brief and from Mr. Beard's affidavit how he has failed to comply with the procedural requirements of this code section in any event, Mr. Faulkner is directed to appear and testify at the hearing as an officer of this Court for the purpose of assisting the Court in this matter. Therefore, the government's motion to quash Mr. Beard's subpoena is DENIED.

C. Notice and Amended Notice to Produce Documents

Mr. Beard, treating this as a "quasi-criminal" case, filed on November 18, 1983, a motion to compel disclosure of certain information which would tend to exculpate him or may lead to evidence which tends to exculpate him. The government has responded that it is not in possession of any such information, nor is it aware of any such information which would fall into that category. Brief of United States at 2. The Court is satisfied with the government's response and therfore DENIES Mr. Beard's motion. The motion for rule nisi, with attachments, adequately apprises Mr. Beard of the nature and substance of the charges and allegations to which he must respond in this case. Furthermore, the Court is providing him with an adequate opportunity to appear and defend against the

charges and allegations made against him. In that regard, Mr. Beard's "Motion for a More Definite Statement" is also denied.

On Janury 3, 1984, Mr. Beard filed an "Amended Notice to Produce Documents," seeking from the government those statements and memoranda obtained from two individuals during "an LEAA conference in Colorado." Beard also seeks government documents "which tend to show the planned use of the dynamite in the possession of the criminal defendants in the Operation Flying circus case, and the existence of a drug distribution system in the Augusta, Georgia area." Amended Motion at 1. No response from the government is contained in the record. The Court will DENY such discovery at this time, subject to his showing of good cause to grant same at the hearing in this case.

D. Motion to Perpetuate Testimony

Mr. Beard also moves this Court for an Order allowing him to perpetuate the testimony of one "Iva David Cochran," pursuant to F.R.C.P. Rule 27. Mr. Beard states that Cochran is a member of the armed forces and that his testimony is vital to Beard's defense in this action. Beard further states that Cochran is moving outside the United States on January 16, 1984 and that "[t]he deponent will testify to the circumstances under which he and his former wife obtained a divorce and a modification of the custody award." Motion at 1. The record reveals no response to this motion by the government. *See* Local Rule 6.1.

F.R.C.P. Rule 27(a)(1) contains specific requirements regarding the contents of such a motion. Even were this Court to conclude that this motion adequately complies with these formal requirements, the Court would *not* be "satisfied that the perpetuation of the testimony may prevent a failure or delay of justice[.]" F.R.C.P. Rule 27(a)(3). In addition, it appears that such an Order would

be moot at this date. The Court will therefore DENY the motion at this time, subject to a showing of good cause to grant same at the hearing in this csae.

To summarize, the Court DENIES Mr. Beard's Motion to Dismiss Proceedings or in the Alternative to Compel an In-camera Inspection of Files; DENIES the government's motion to quash Mr. Beard's subpoena; DENIES Mr. Beard's motion to produce government documents; DENIES Mr. Beard's Motion for a More Definite Statement; DENIES Mr. Beard's Amended Notice to Produce Documents and DENIES Beard's Motion to Perpetuate Testimony.

Laronce Beard is ORDERED and directed to appear before this Court at 1:30 P.M. on January 20, 1984, at the United States Courthouse, First Floor, 500 East Ford Street, Augusta, Georgia, in a closed hearing to show cause why his conduct, as described in the United States' Motion for Rule Nisi, should not result in disbarment or suspension from practice or other disciplinary action in this Court because such conduct was violative of the standards of practice required of members of the Court's bar under its Local Rules.

SO ORDERD, this 19th day of January, 1984.

/s/ B. Avant Edenfield
JUDGE, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

APPENDIX E

AMENDMENT V

Rights of Accused in Criminal Proceedings

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX F

AMENDMENT VI

Right to Speedy Trial, Witnesses, etc.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

APPENDIX G

RULE 302

Applicability of State Law in Civil Actions and Proceedings

In civil actions and proceedings, the effect of a presumption respecting a fact which is an element of a claim or defense as to which State law supplies the rule of decision is determined in accordance with State law.

APPENDIX H

RULE 4-221(e)

In all proceedings under this chapter, including jury trials, the burden of proof shall be on the State Bar of Georgia. In all proceedings under this chapter occurring after a preliminary investigation as described in Rule 4-204, the procedures and rules of evidence applicable in civil cases shall apply except that the quantum of proof required of the State Bar shall be beyond a reasonable doubt.

APPENDIX I

LOCAL RULES FOR THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA

Effective November 1, 1977

RULE 19
ATTORNEYS

19.1 Roll of Attorneys. The bar of this Court shall consist of those persons heretofore admitted to practice in this Court and those who may hereafter be admitted in accordance with this rule.

19.2. Eligibility. Any attorney who is a member in good standing of the State Bar of Georgia is eligible for admission to the bar of this Court.

19.3 Procedure for Admission.

19.31 Each applicant for admission to the bar of this Court shall file with the clerk a written petition, on the form provided by the clerk, setting forth his residence and office address, his general and legal education, and the other courts to which he has been admitted to practice. The petition shall be signed by two members in good standing of the bar of this court who recommended his admission.

19.32 The clerk will examine the petition and the accompanying recommendations and if they are in compliance with this rule, the petition will then be presented to a judge of this Court. The petitioner will make suitable arrangements thereafter with the clerk for his appearance and admission in open court or in chambers in accordance with this rule.

19.33 The clerk shall arrange and schedule ceremonial admission day for new members of the bar twice

a year on a date soon after the announcement of the results of the Georgia Bar Examination as practicable. The clerk will cause a notice of this admission ceremony to be published as he deems appropriate. Otherwise, admissions to this Court shall be the first item of business on the opening of court on any Monday morning. Applicants for admission will not be admitted at times other than those heretofore prescribed except under special circumstances requiring immediate admission.

19.34 When a petition is called, one of the members of the bar of this Court shall move the admission of the petitioner. When admitted, the petitioner shall take an oath in the following form:

> "I do solemnly swear or affirm that I will support the Constitution of the United States; that I will bear true faith and allegiance to the government of the United States; that I will maintain the respect due to the courts of justice and judicial offices; that I will well and faithfully discharge my duties as an attorney and officer of this Court; and that I will demean myself uprightly and according to the law and the recognized standards of ethics of the legal profession. So help me God."

19.35 The petitioner, after taking the foregoing oath, will then sign the roll of attorneys in the divison where admitted and will pay to the clerk the prescribed enrollment fee.

19.4 Permission to Practice in A Particular Case. Any member in good standing of the bar of any other district court of the United States who is not a resident of this district and who does not maintain an office in this district for the practice of law, may be permitted to appear and participate in a particular case in this Court with prior approval of this Court and without the requirement of associating local counsel, subject to the following provisions, and

19.41 Upon motion of any attorney or upon motion of the Court, and for good cause shown, the Court may require in a case where a party is represented only by counsel and not a member of the bar of this Court, such counsel to designate, by a writing filed in that cause, some willing member of the bar of this Court upon whom motions and papers may be served. That designation shall not become effective until that local counsel has entered a written appearance therein. In any case in which an attorney makes an appearance in any action or cause pending in this Court and said attorney is not a member of the bar of this Court, he shall on the first pleading filed in this Court, certify that he is a member in good standing of a district court of the United States and shall designate the particular court of which he is a member.

19.42 Any attorneys representing the United States Government, or any agency thereof, may appear and participate in particular actions or proceedings in his official capacity without a petition for admission, provided he is a member of a bar of a district court of the United States.

19.5 Disbarment and Discipline.

19.51 Any member of the bar of this Court may for good cause shown, and after an opportunity has been given him to be heard, be disbarred, suspended from practice for a definite time, reprimanded, or subjected to such other discipline as the Court may deem proper.

19.52 Whenever it has been made to appear to this Court that any member of the bar of this Court has been disbarred or suspended from the practice of law by the State Bar of Georgia or the courts of the State of Georgia or any other state, or has been convicted of a felony or any crime involving moral turpitude in this Court or any other court, he may be suspended forthwith from practice before this Court, and unless he

shows good cause to the contrary within thirty (30) days from the date of such disbarment, or conviction, there shall be an order of disbarment.

19.53 Any person who before his admission to the bar of this Court or during his disbarment or suspension, exercises in this Court any of the privileges as a member of such bar, or pretends to be entitled to do so, is guilty of contempt of this Court and subjects himself to appropriate punishment therefor.

19.54 The standard of professional conduct of the members of the bar of this Court shall include the current canons of professional ethics of the American Bar Association. A violation of any of these canons in connection with any matter pending before this Court may constitute a contempt of this Court potentially subjecting such attorney to appropriate disciplinary action.

19.6 Appearance By Attorney.

19.61 The filing of any pleadings shall, unless otherwise specified, constitute an appearance by the person who signs such pleading. Any such appearance shall include a current address and telephone number of counsel.

19.62 An attorney representing a witness in any civil action or criminal proceeding, including a grand jury proceeding, or representing a defendant or prospective defendant in a grand jury proceeding, shall file a notice of appearance with the consent of the client endorsed thereon, with the Clerk of the Court on a form to be prescribed and furnished by the Court, except that the notice need not be filed when such appearance has previously been evidenced by the filing of pleadings in the action or proceeding. The notice shall be filed by the attorney promptly upon undertaking the representation and prior to the attorney's appearance on behalf of his client at any hearing or grand jury proceedings. When

the appearance is in connection with a grand jury session, the notice of appearance shall be filed with the clerk in such a manner as to maintain the secrecy requirements of grand jury proceedings. For the purpose of this rule, an attorney shall be deemed to be appearing for and representing a witness or party if he is present within the courthouse and advising such witness prior to entering the chambers of the grand jury or is interviewing witnesses of the grand jury before or after their appearance.

19.63 Each attorney retained by defendants in criminal cases shall, within three days after being retained, notify the clerk in writing of his appearance as attorney of record and shall furnish a copy of said notice to the United States Attorney. Counsel becoming associated with counsel already of record in a criminal case or being substituted for counsel then of record in the case, upon being associated with or replacing counsel or upon being retained by a party or parties to the case, shall notify the clerk in writing of his appearance in the case. Counsel so registered as counsel of record will not be relieved of such responsibility except upon order of the Court as hereinafter prescribed.

19.64 Whenever a party has appeared by attorney, he may not thereafter appear or act in his own behalf in the action or proceeding, or take any step therein, unless an order of substitution shall first have been made by the Court, after notice to the attorney by such party and to the opposite party, provided, that the Court may hear a party in open court, notwithstanding the fact that he has appeared or is represented by an attorney.

19.65 No attorney shall withdraw his appearance in any action or proceeding, either civil or criminal, except by leave of the Court as hereinafter prescribed.

19.66 When an attorney dies, or is removed or suspended or ceases to act as such as hereinafter prescrib-

ed, a party to an action or proceeding for whom he was acting as attorney must, before any further proceedings are had in the action on his behalf, appoint another attorney or appear in person, unless such party is already represented by another attorney. Failure to so act or to so appear in person and to furnish his address to the clerk shall constitute a default on his party.

19.67 If an attorney for any party is examined as a witness in an action or proceeding, and gives testimony on the merits, he shall not argue the merits of the case or proceeding, either to the court or jury, except with the permission of the Court.

19.68 Only one attorney on each side shall examine or cross examine a witness, and not more than two attorneys on each side shall argue the merits of an action or proceeding unless the Court shall otherwise prescribe.

19.7 Withdrawal as Attorney of Record. Attorneys representing parties in any case, desiring to have their names stricken of record, shall so request one of the district judges of this Court, in writing and in duplicate, through the clerk of this Court, and shall disclose that such attorney has given due notice to his client of his intention to withdraw from the case, and shall specify the manner of such notice to the client, attaching copy of the notice. Such notice to the client shall be given at least ten days prior to the request to the Court. Upon the filing of the request with the clerk, a copy thereof shall forthwith be mailed to the client and within ten (10) days therafter, such request shall be presented by the clerk to the district judge for his action thereon. Ordinarily, counsel will not be allowed to withdraw after pre-trial if such withdrawal will delay the trial of the case, in which event the attorney shall continue as responsible for the handling of the case.

19.8 Relations With A Jury. All attempts to curry favor with juries by fawning, flattery, or pretending soli-

citude for their personal comfort are unprofessional. Suggestions of counsel, looking to the comfort or convenience of jurors and propositions to dispense with argument or peremptory challenges, should be made to the Court out of the presence of the jury or its hearing. Before and during the trial, a lawyer shall avoid conversing or otherwise communicating with a juror on any subject, whether pertaining to the case or not. A party or his attorney is forbidden to communicate with any juror sitting in such party's case, after any verdict, without permission of the Court.

APPENDIX J

ARTICLE III – THE JUDICIARY

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and treaties made, or which shall be made, under their Authority; – to all Cases affecting Ambassadors, other public Ministers and Consuls; – to all cases of admiralty and maritime Jurisdiction; – to Controversies to which the United States shall be a party; – to Controversies between two or more States; – between a State and Citizens of another State; – between Citizens of different States, – between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the

State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Section 4. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a contentions of parties, facts established, special questions to be presented to jury, and other matters preliminary to jury trials was appealable. In Matter of Boswell, 240 Ga. 75, 239 S.E. 2d 387 (1977).